THE READING OF M. ROBERT BROOK, SERIEANT of the Law, and RECORDER of LONDON,

Upon the Stat. of *MAGNA CHARTA*, CHAP. 17.

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The Reading of Mr. Robert Brooke, Serjeant of the Law, and Recorder of London, upon the Stat. of *Magna Charta*, the ſeventeenth Chapter.

CHAP. I.

Of high Treaſon.

Inprimis, If any man imagine the death of the King, or of the Prince, or Princeſſe, or of any that is Heire apparent to the Crowne, it is high Treaſon.

If any keep warre againſt the King in his Realme, it is high Treaſon by the Stat. of 25. *E.* 3. 25. *E.* 3.

If any bee ayders or aſſiſtants to the Kings enemies, either within the Realme, or elſewhere, it is high Treaſon. 23. *E.* 3. & 4. 9.

If any affirme by writing, or other act, that the

King is not ſupreme Head of the Church of England; or if any imagine to deprive the King of his eſtate Royall, or of the titles of his Realme, it is high Treaſon.

35. *H.* 8. *cap.* 1. If any to whom the Crowne is committed by Act of Parliament, uſurpe it, or demeane it in other manner then is expreſſed in the Act, or will keepe the King from it, it is high Treaſon by Stat.

If any man kill the Chancellor, or Treaſurer, or any of the Juſtices of one Bench or other, Juſtices of *Oyer*, Juſtices of Aſſize, or of *Oyer* and *Terminer*, ſitting in their Offices, it is high Treaſon.

If any counterfeit the Kings Seale manuall, Privy Seale, or his Signet, it is high Treaſon.

If any counterfeit the Kings coyne of this Realm, or of any other coyne currant in England, or clip, waſh, file, round, or diminiſh the ſaid coyne, it is high Treaſon.

If any man bring falſe money or counterfeit into England, having knowledge of that money to bee counterfeit, it is high Treaſon.

If any man kill the Kings Meſſenger in his meſſage, it is high Treaſon.

If any man kill one that rideth with men to aide the King, it is high Treaſon.

CHAP.

CHAP. II.

Of petie Treaſon.

IF the Wife kill the Husband, or the Husband the Wife; or the Servant his Maſter or Miſtris, this is petie Treaſon. 12. *E.* 3. 19. *H.* 6.

A woman of the age of thirteene yeeres killeth her Miſtris, this is petie Treaſon; but ſhee ſhall not bee hanged and drawne, but burnt. 40. *R.* 2.

The Servant procureth another to kill his Maſter, which killeth him, it is not petie Treaſon in the Servant; for the principall is no Traytor, and the acceſſary is no ways caſt, and ſo they be both Felons. 25. *E.* 3.

A man beateth his ſervant, which departeth from him, and after the end of his terme hee killeth him that was his Maſter in revenging his old quarrell, this is petie Treaſon; for the murder cometh of the malice that began in his ſervice. 30. *E.* 3. *fol.* 7.

A man marryeth his couſin, and ſhe killeth him, this is not petie Treaſon, for they were never lawfully marryed.

A man retaineth *J.* at *S.* to bee his Steward of his Courts, and hee killeth his Maſter, this is not Treaſon; for hee is no ſervant that oweth to his Maſter obedience, as is contained in the Statute of 25. *E.* 3. 25. *E.* 3.

If an infant of the age of ten yeares marry a wife of the age of nine yeeres, and ſhee killeth her huſband, this is petie Treaſon, for at that age ſhee ſhall bee endowed. 3. *H.* 7.

A man retaining a woman for 40. s. a yeere to bee his Concubine, and ſhee kill him, this is no Treaſon, for the retaining was not lawfull, and therefore ſhee was not his ſervant.

The Husband and the Wife bee divorced (*cauſâ frigiditatis*) and after ſhee killeth her Husband, this is petie Treaſon, for that is but a divorce from table and bed, and matrimony doth continue, and therefore ſhee ought to bee faithfull and obedient.

The Husband and the Wife bee divorced (*cauſâ conſanguinitatis*) and after ſhee killeth her Husband, this is no Treaſon; for the marriage was againſt the Law.

A man marryeth with a Turke or a Jew, and ſhee kils him, this is no Treaſon: for the marriage was unlawfull.

A Villein killeth his Maſter, this is no Treaſon.

The Tenant doth homage unto his Lord, and after killeth him, this is no Treaſon.

28. E. 3. & 2. H. 4. A man hireth an infant of the age of 10. yeeres, and hee killeth his Maſter, this is not Treaſon; for the retaining was voyd.

CHAP. III.

Of Murder, Manſlaughter, and what not.

WHat ſhall bee ſaid Murder, and what Manſlaughter, and where a man may juſtifie the killing of a man.

A man is indicted of felony, and a *Cap'* is awarded to take him, and hee reſiſteth; if the Officer kill him, hee may juſtifie it, if he could not otherwiſe take him. 22.E.3.

The Gaoler cometh into the priſon, and findeth his priſoners at large, and breaking their fetters; if hee kill them, hee may juſtifie that act, if hee could not otherwiſe take them. 22.E.3.

A priſoner in ward for felony breaketh the priſon, and eſcapes, and *I. S.* cometh to him, and cannot take him but by killing of him, and ſo doth kill him, this is juſtifiable. 22.E.3.

Two women fight, and *I. S.* cometh to part them, and one of them ſtriketh *I. S.* and killeth him without malice, this is manſlaughter and felony, and ſhee ſhall die for it, for ſhee ſeeth *I. S.* But *quere* if ſhee had ſtroke him behinde his back, if it had been felony or not. 22.E.3. Manſlaughter.

A thiefe cometh to the houſe of *I. S.* and ſetteth fire on it, and *I. S.* ſhooteth at him and killeth him, this is neither felony, murder, nor manſlaughter. 25.E.3.fol.23.

The Maſter and the Servant riding by the way, a thiefe aſſaulteth the Maſter, and ſtriketh the Maſter to death; the ſervant haſtily to reſcue his Maſter, killeth the thiefe, this is neither murder nor manſlaughter. 25.E.3. fol.23.

A thiefe aſſaulteth *I. S.* to rob him, and *I. S.* killeth him, this is neither murder nor manſlaughter. 25.E.3.fol.32. vil.22.

A man goeth in an high way within a Parke, and the Keeper hath malice towards him, and cryeth to yeeld, and hee will not, but ſtandeth at defence, and the Keeper killeth him, this is felony of his death.

An Infant within the age of diſcretion, (that is, nine yeeres) killeth his companion, and after excuſeth himſelfe, this is felony of death; for by the excuſing of himſelfe it doth appeare that hee hath diſcretion to know good from evill.

12.E.3. fol.30.

A man *non ſanæ memoriæ* killeth a man, this is no felony, neither ſhall he die for it; for others of diſcretion cannot take example at him.

21.H.7.

A man killeth one that is outlawed of felony, this is not felony of death.

2.E.3.fol.3.

A man that is deafe, dumbe, and blinde, killeth a man, this is neither felony, manſlaughter, nor murder, *cauſa qua ſupra.*

2.E.3. fol.3.

A man beateth a woman that is with childe, and ſhee laboureth, and the childe is dead borne, this is neither murder nor manſlaughter.

23.E.3.fol.2.

A man cutteth a tree, and the branches of the tree fall upon *I.S.* and kill him, unknowne to him that cutteth the tree, this is not felony, for it is not done with a felonious intent.

6.E.4.fol.8.

A man ſhooteth at the pricks, and killeth a man, this is not felony; for the marks bee certaine, every man ought to keep himſelfe off: but otherwiſe it is where the pricks bee not certaine, for then hee that ſhooteth muſt take heede where hee ſhootes.

Two

Two men fight, and one of them killeth *I. S.* being behinde him as hee ſtriketh at his adverſary, this is not felony, becauſe he doth not ſee him: but otherwiſe it had been if he had ſeen him. 6.E.4.

A man hath judgement to bee hanged, and the Sheriffe doth behead him, this is murder. 3.H.5.

A man ſtriketh another downe to the ground, and holding his dagger in his hand, the other, for haſte to ariſe to ſtrike him againe, runneth upon his dagger and is killed, this is neither murder nor manſlaughter in him that held the dagger.

A man ſtriketh another, which dyeth without a yeer and a day, it is neither murder nor manſlaughter; for if hee dyed out of the yeere, it ſhall bee intended hee dyed of the viſitation of God, and not of the ſtroke. 30.E.3.*fol.*30.

A man impaleth his ground, and putteth in his Deere, and hath a Keeper to keep them, and *I. S.* commeth through the Parke, and hunteth, and the Keeper cryeth unto him to yeeld him to the Keeper, and hee will not, and the Keeper killeth him, this is murder *per Statutum de malefactoribus in Parcis*, and it is not materiall, be it by day or by night, for it is no Park if the Lord have not the Kings Leters Patents. 23.

A man perceiveth his Father to be ſick, and under pretence of amity hee carryeth him from Towne to ſeek Phyſick, and killeth him by importunate carriage, this is murder. 2.E.3.

A Phyſician or Surgeon taketh a man in cure, which 3.E.3.

which doth kill him by the insufficient medicine, this is not murder nor manslaughter.

3.*E*.3. A man that is neither Physician nor Surgeon taketh upon him to know Physick and Surgery, and taketh upon him the cure of men, and one dyeth for the insufficiency of medicine, this is murder.

10.*H*.4. A man abjur'd going to his Port or Sanctuary, meeteth a man in the high way, and killeth him, this is murder, but hee shall not bee arraigned for it, for hee had judgement of death before, and hee shall not have another judgment of death before that he have avoyded the first judgement.

The Prince striketh a man of malice, which dyeth of the stroke, and the King dyeth, this is not felony, for by the death of the King the Prince is King, and cannot be a felon.

A Turke or a Jew cometh into England without the Kings licence, and *I. S.* killeth him, this is not felony; for hee is neither of the faith of Christ, nor under the Kings protection.

21.*E*.3. *I. S.* Deane of *Pauls*, and fourteene of the Chapiter steale sheep, this is not felony in the Body politick, but in their materiall bodies.

A man cometh to a Park, and findeth the Keeper, and bindeth him to a tree, and gaggs him, this is murder if he dye.

CHAP.

CHAP. IIII.

What acts and miſdemeanors may be called Robbery, and what not, and what Felony, and what Burglary.

A Man aſſaulteth another to rob him, and taketh from him but one penny, this is robbery, and felony for the feare hee putteth the other in.

A man aſſaulteth another to rob him, and ſnatcheth at his purſe, and taketh hold of his girdle, and the true man eſcapeth away with his purſe, and the thiefe hath but the girdle, this is felony.

A thiefe goeth by the high way, and findeth *I. S.* ſleeping, and the thiefe taketh out of *I. S.* his purſe 12. d. and leaves him ſleeping, this is not felony; for *I. S.* was never put in feare of his life. *Nul Ley per le Stat. de 4. E. 4.*

A man meeteth his Villein in the night, and taketh from him his horſe, this is no felony; for hee may take any thing away from him by way of ſeiſure.

Lord and Tenant: The Lord cometh to the houſe of the Tenant in the night, and taketh from him his bacon or his beefe for rent, or ſervice in arrere, this was not felony, for it was not with a felonious intent.

A Writ is directed to the Sheriffe, to attach *I. S.* in a perſonall action, and comming in the night, findeth *I. S.* leading his horſe in his hand, and tacheth *I. S.* by his horſe, this is not felony, for hee

hath colour to take his horſe by precept.

A Tailor receiveth of *I. S.* cloth to make for him a coat, and the Tailor putteth in other lining then *I. S.* his lining; *I. S.* taketh the coat and lining from the Tailor, this is not felony; for the lining and the thred bee of the ſame nature as the principall is, which is the coat.

A man claymeth as heire lowmes after the death of his Father more ſtuffe then hee ought to have, and cometh in the night, and taketh them from the Executors by force, this is not felony; for hee maketh title unto the goods.

12. *H.* 8. A man meeteth another in the night with a grey-hound in his ſlip, and aſſaulteth him to rob him of his dog, this is felony; although the taking of the dog without feare is not felony, yet becauſe the party was put in feare of his life, it is felony.

12. *E.* 3. *fol.* 32. A man cometh into a wood, and cutteth and taketh away trees to the value of 20. s. it is not felony; for they bee parcell of the Franktenement; but otherwiſe it is if a man ſteale away trees that bee felled.

If a man raviſh a woman it is felony.

A man cometh into an houſe to rob a man, and ſudden feare taketh him, and he departeth without doing any harme, this is felony.

1. *H.* 7. A man cometh to the houſe of *I. S.* to arreſt one *S.* for felony, and *I. S.* doth reſiſt him, this is felony in *I. S.*

27. *E.* 3. A man is robbed, and purſueth the felon, and arreſteth him, and taketh his goods, and ſuffereth the

the felon to goe, this is felony in him that was robbed.

A man entreth into an houſe to rob, and no body lyeth in the houſe, and hee retireth againe, and taketh nothing; yet this is burglary and felony. 32. E. 3.

A man taketh a flight of Doves in the field, this is no felony.

A man ſtealeth fiſh out of my ſeverall ponds to the value of 13. d. this is felony; for the Stat. of 22. H. 8. which is revived, maketh mention, where a man hunteth with a viſard, or diſguiſed. 22. H. 8. *Auterment jam per* 5. El. ca. 21.

A man entreth into the Church in the night to rob it, and findeth nothing, this is burglary. 22. E. 3.

A man that is Lord claymeth the beſt beaſt that his Tenant hath for herriot cuſtome, and the Lord taketh his herriot in the night, this is no felony, for the property of the beaſt is in the Lord by the death of his Tenant. 8. H. 7. fol. 11.

A thiefe ſtealeth my horſe, and I purſue him, and for feare he delivereth me my horſe, and I take him, I am neither felon nor acceſſary; for it is at mine election to make the taking of my horſe felony or treſpaſſe: but otherwiſe it is if I arreſt him by an Officer.

A man ſtealeth goods that bee wrecked up in the ſea, it is not felony, for the propertie of the goods is in no man. 22. E. 3. fol. 83.

A man lyeth in an Inne, and in the night taketh his ſheets and coverlets and hideth them, and goeth for his horſe, and before hee can eſcape away, hee is taken, this is felony by Statute. fol. 32. 5. H. 4.

27.E.3.fol.16. A man commandeth his Wife to ſteale money from *I. S.* ſhee doth, it is not felony in the Wife, for by the compulſion of her husband ſhee is obedient.

5.H.7. A woman that is heire apparant unto her Father, is taken away againſt her will by *I. S.* and after is by him marryed by cohercion, this is felony by Statute.

A man ſtealeth *I. S.* and putteth out one of his eyes, this is not felony; for the Statute ſpeaketh of putting out both the eyes, and a penall Statute ſhall bee taken ſtrictly, for hee hath put out but one eye.

10. E.4. A man ſtealeth a box of evidence, this is not felony, for the box is of the ſame nature as the Charters are, and the Charters concerne the Franktenement.

15.E.4. A man delivereth his beaſts for another to ſell for him, which flyeth with them, this is not felony, becauſe hee came lawfully by them.

13.E.4. & 21. H.7. A man delivereth his plate to his Butler to keepe, and hee flyeth with it, this is felony, for ſo long as the plate remaineth within his houſe, it is in his poſſeſſion.

13.E.4. The Wife taketh the goods of her Husband, and carryeth them away ſecretly, this is not felony; *Quære* the Receiver.

16.E.4. A man ſtealeth young Doves out of their neſts, this is felony.

18.E.4. Hawkes taken out of their neſts is felony: but if they be taken with nets when they are branchers, it

is

is not felony ,for they bee out of every mans poſſeſſion.

A man ſtealeth fiſh out of my trunk in the day, this is felony. 18.E.4.

A man ſtealeth Faulcons eggs out of the neſts, this is felony by Statute. 3.& 4.H.6.

If a man burn another mans houſe,it is felony. 1.E.4. 3.H.7. 13.E.4.

A woman that is marryed and *I. S.* bee confederated to rob the Husband, and the Wife ſtealeth the goods, and delivereth them to *I.S.* this is felony in *I.S.* but not in the Wife.

A man ſtealeth my Popingay or Linet, or other ſuch bird of pleaſure,it is not felony. 12.H.8.

The ſame law for ſtealing of Hounds; but if a man ſteale a Maſtiffe, it is felony; for Hounds be but things of pleaſure, and not of profit; but the Maſtiffe is contrary. 12.H.8.

A man entreth into my houſe in the day to rob, and taketh nothing, it is felony.

A Gaoler compelleth a priſoner to approve or appeale others that are not guilty, it is felony in the Gaoler by Statute. 14.E.3.

If a man ſteale at twenty times twenty pence, it is felony; yet if hee had ſtollen twenty pence at one time, it had been but pety larceny.

A man ſtealeth a ſeat out of the Church, this is not felony; for it is parcell of the Franktenement. 9.H.7.

A man maketh a grant of the next voydance of a Benefice, and *I. S.* ſtealeth it, this is felony; for the Charter is of the nature of a Charter royall.

A man

14.H.8. A man ſtealeth milſtones off a mill, it is no felony.

9.H.6. A man is outlawed in the common law by the name of *I. S.* for debt, and one raſeth the record, and putteth in *T. D.* this is felony by Statute.

7.H.7. A man baileth goods to *I. S.* to keepe, and after the bailor ſtealeth the goods from the bailee, it is not felony, for the property is in himſelfe; but it is adjudged contrary.

27.H.7. A man ſtealeth glaſſe out of windowes which be made faſt with ſprignailes, it is felony.

But contrary, if they be faſtned with great nailes, for then they be parcell of the Franktenement.

Felons doe breake my doores, towers, or ports, to the intent to rob, kill, or feare any man; this is felony, though they take nothing.

CHAP. V.

Acceſſaries and good Indictments. What perſons may bee called acceſſaries to the felons, and what not; and where the acceſſaries ſhall bee put to anſwer, and where not; and which ſhall bee ſaid good indictments of felony, and which not.

Acceſſary before. Acceſſary after. NOte, That there bee two kindes or manners of Acceſſaries, one before the felony, and another after the felony. Acceſſary before the felony is hee that moveth the felon to doe the felony: Acceſſary after, is hee that receiveth, or doth aide or help the felon in any manner after the felony done, to his knowledge. 7.H.4.

Princi-

Principall and Acceſſary; the principall not being arraigned, the acceſſary ſhall not bee put to anſwer. 7 H.7. 3.H.3. fol.1. 11.H.6. 9.E.4.

The principall is taken and put in priſon, and dyeth in priſon, the acceſſary ſhall not bee put to anſwer; for by the death of the principall, the acceſſary is diſcharged. 7.H.4.

Two men are indicted for killing of a man, the one as acceſſary, the other as principall; and it is found the principall killed him *ſe defendendo*, the acceſſary ſhall not bee put to anſwer: for when the principall is acquit of the felony, the acceſſary ſhall not be in worſe caſe.

A man committeth felony, and *I. S.* ſaith for his deliverance according to the Law, hee is not acceſſary to his felony. fol.34. 25.E.3. fol.47. & 5.

I. S. is acceſſary to a felony, and *W. S.* knowing of it, receiveth or comforteth *I. S.* hee is acceſſary, and it is felony in him; for hee that is acceſſary is a felon, and the firſt acceſſary is a felon, and therefore hee is acceſſary to the felony.

A man procureth *I. S.* that he ſhould procure *I.K.* to kill *W.D.* the firſt procurer is acceſſary.

A man ſtealeth goods, and *I. S.* is indicted, *quòd ipſe felonicè recepit*, knowing that the goods were ſtollen, *I. S.* is attainted, and there is another acceſſary to *I.S.* he ſhall never be put to anſwer; for hee is acceſſary to the goods, and not to the man. 27.E.3.

If an infant, or a man that is mad receive goods that be ſtollen, it is not felony nor acceſſary.

If the principall pleade the Kings pardon, the acceſſary

acceſſary ſhall not bee put to anſwer.

If a woman covert baron receive a felon, or goods at his hands, knowing that they bee ſtollen, ſhee is acceſſary.

7. H. 4. & 15. If the principall plead not guilty, and bee found guilty, and pray his clergy, and hath it, the acceſſary ſhall not bee put to anſwer, for the principall may make his purgation, and goe at large.

A man committeth felony, and his wife knowing of it, bringeth to her husband meat and apparell, and other neceſſaries, ſhe is not acceſſary.

22. E. 3, 4, & 6. Principall and acceſſary bee, the principall is hanged for another cauſe, the acceſſary ſhall not be put to anſwer.

13. E. 4. fol. 7. If the principall confeſſe the felony, and upon his arraignment he pray his book, the acceſſary ſhall be put to anſwer, for by the confeſſion the principall is concluded to make his purgation: but upon a verdict, if the principall pray his Clergy, the acceſſary ſhall bee diſcharged; for it were againſt reaſon to hang the acceſſary, and ſuffer the principall to goe at large.

A woman that is married doth felony, and cometh to her husband, and hee knowing receiveth her, is acceſſary to the felony.

Note, The indictment of felony may bee taken before the Juſtices of the Kings Bench, or before Juſtices of *Oyer* and *Terminer*, or Juſtices of peace in letters.

Fol. 35. 9. E. 4. fol. 4. A man is indicted for that he ſuch a day and yeer did felonioufly ſteale the gowne of a certaine man unknown;

unknowne; this is a good indictment, but this word *unknowne* is not a good word in an appeale.

A man was indicted of a rape, *eo quòd ipſe tali die an. & hora à ſe, & eam tunc & ibidem carnaliter cognovit, contra voluntatem ſuam*: this indictment is naught, for it lacketh *felonicè*, and by the Stat. it ſhall be *rapuit, & cepit, & carnaliter cognovit*. 1.E.6.

In an indictment for breaking of the priſon, the indictment ſhall make mention, that the priſoner was in priſon for felony. 9.E.4.

A man may be indicted by the name of *I.S.* hoſtler, for that is a good addition. 21.H.6.

It is not a good indictment of murder to ſay, *felonicè interfecit*, for it ſhould be, *felonicè murderavit*. 9.E.4.

A man may bee indicted by the name of *I.S.* pariſh Clarke, and it is a good addition. 22.E.4.

Widow, or ſingle woman is a good addition. 10.H.6.

I.S. is indicted *eo quòd ipſe eſt communis latro*; this is not a good indictment, for it is not certaine what felony hee hath done, ſo that hee cannot tell how to have traverſe to it. 22.E.3.

A man is indicted in the Sheriffes turne the fourth day of *Novem.* it is as *coram non Judice*, for the Sheriffe ought to hold his turne in the moneth of Eaſter or Michaelmas, by the Stat. 31.*E.* 3. as it doth appeare 6.*H.*7.*fol.*1. 38.*H.*6.*fol.*7. 31.E.3.

A man is indicted of felony at the great Leete of *I.N.* holden, &c. this indictment is not good, for the Lord cannot award proceſſe for the party in that Court. 10.E.3.

If a man bee indicted of rape by formall indict-

ment in a Leet or Sheriffes turne, the indictment is void; for by the Statute rape is not inquirable in a Leet or Sheriffes turne, but as treſpaſſe, as it was before the Statute; the ſame Law of the Decrees *tantum*, though that a man have cogniſance of plea by the Kings grant.

If a man bee indicted for felony done upon Saint *John*'s day, the indictment is void, for there are two S. *John*'s dayes, and the indictment ought to ſhew which. 3. *H.* 4.

A man is ſtruck in one County, and dyeth in another County, hee that ſtroke him is indicted in the County where hee dyed, this is a good indictment by the Stat. of 2. *E.* 6. 2. *E.* 6.

If a man be indicted for counterfeiting the Kings coyne before the Juſtices of peace, it is voyd, for they have not authority to doe that. 2. *R.* 3.

If a man be indicted for felony, for ſtealing of an horſe, if the indictment want any of theſe words, that is to ſay, *felonicè cepit & abduxit*, the indictment is voyd, for theſe words ſhall not bee taken by implication, if they lack. 2. *E.* 3.

If a man and two women be indicted for raviſhing one *A. S.* this is a good indictment, as well againſt the two women as the man, *quare cognovit quod unum feme poet foultra oveſque un auter uncore el poet eſtre al home coadjutor*. 44. *E.* 3. *fol.* 15. & 13.

A man is indicted for that hee was privie unto a murder done by *I. S.* this is not a good indictment, for the indictment doth not ſhew that he did ſtrike, and counſell or conſent unto the felony. 14. *H.* 4.

A man

A man indicted of felony in the time of *H.*8. that indictment will ſerve well in the time of *E. 6. per Statut.* 1. *E.* 3. *Fol.*36. 1.*E.*3.

Commiſſioners of *Oyer* and *Terminer*, of felons by Commiſſion in the time of *H.*8. take indictments in the time of *E. 6.* the parties indicted ſhall not bee arraigned upon the ſaid indictments, for by the death of the King, their Commiſſion is determined.

Crowners made in the time of *H.* 8. may take indictments *ſuper viſum corporis* in the time of *E. 6.* for they be made by Writ, and not by Commiſſion, and they ſhall endure untill they ſhall be diſcharged by Writ: but otherwiſe of Commiſſioners. 4.*E.*4.*fol.*44.

CHAP. VI.

Arraignment of felons, and what pleas they ſhall have, and what not; and where they ſhall bee put to penance, and where not; and where a man ſhall bee twice arraigned for one felony, and where his life ſhall bee put twice in jeopardy for one felony.

A Man is arraigned of the death of *I. S.* which was killed at B. hee ſaith hee was another time arraigned, indicted, and acquitted of the death of the ſame *I. S.* at B. *interfect.* in another place, and ſheweth the Record under ſeale, and averreth that he is the ſame perſon that is *I. S.* this is a good plea. 16.*E.*3.*fol.*15.

A man is outlawed of felony, and is led unto the Barre, and demanded of him what hee hath to ſay wherefore he ſhould not die; and hee ſaith that in the time of the outlawry hee was in priſon in the 7.*H.*6.

Caſtle of B. *ſub cuſtod' &c.* this is a good plea.

A woman is arraigned of felony, and is convict by verdict, and is demanded what ſhee can ſay why ſhee ſhould not dye, which ſaith ſhe is with childe; this is a good plea: it was holden *contra* 12. *E.* 3. *fol.* 11.

8. *H.* 4. *fol.* 4. A man is indicted as acceſſary unto a felony committed by *I. S.* which was arraigned and attainted: the defendant ſaith that there is no ſuch record, and prayes allowance, and pleads over to the felony, not guilty; this is a good plea.

Two bee arraigned, and one pleadeth the Kings pardon, and a releaſe to his companion, and ſheweth
21. *E.* 4. that it is no plea, 21. *E.* 4. for felony cannot be joynt; but otherwiſe it is of treſpaſſe.

A man arraigned of felony, ſaith that another time hee was arraigned of another felony committed ſince that felony was done, and acquit where his life was in danger, and demands judgement: If for any other felony committed before hee ſhall be arraigned, this is no plea; but if hee had pleaded hee had been condemned, and had the Kings pardon after, and ſo delivered, it had beene good plea; for judgement of death is a diſcharge of all felons done before.

2. *H.* 7. A man committeth murder, and the King pardons him the murder, and the next day hee beateth and maymeth *I. S.* and hee is arraigned of the murder, & pleadeth the Kings pardon, by the beating of *I. S.* the pardon is become not good, 2. *H.* 7. for by
10. *E.* 3. the Stat. of 10. *E.* 3. hee ſhall finde ſurety of his good

good behaviour for 3. moneths after the pardon.

A man ſtealeth goods in the County of A. and bringeth them in the County of N. and after is indicted and arraigned in the County of A. and hee ſaith hee carryed the goods into the County of N. and there hee was indicted and acquitted for the ſame goods, and prayes allowance, and to the felony not guilty, this is good plea; for though hee commit felony in two Counties, his life ſhall not be in jeopardy twice for one felony. 4. H. 7. fol. 37.

A man arraigned of felony pleades not guilty unto the iſſue, and when the Jury appeares hee pleades the Kings pardon, and ſhewes it, that is no plea, except the pardon beare date after the iſſue joyned. 11. H. 4.

A man arraigned of felony pleades the Kings generall pardon by Act of Parliament, although hee hath pleaded not guilty before, that pardon ſhall bee allowed, for every man is bound to take notice of that pardon.

A man is indicted by the name of *I.S.* of B. and upon the arraignment, he ſaith his name is *I. Roe* of B. and not *I.S.* and prayes allowance, and pleades over to the felony not guilty, this is no plea, for he ought to give it in evidence if he be miſ-named: for if he be the ſame perſon, he ſhall anſwer to the felony: but otherwiſe it is in appeale. 1. H. 5.

A man arraigned of felony ſaith, that another time *I. S.* appealed him of the ſame felony, unto that which hee pleaded not guilty by battell, and hath vanquiſhed the appeale, and went quit:

this

this is no good plea, for his life ſhall not bee put in jeopardy twice for one felony.

7.H.7.fol.5. A man is arraigned of felony upon an indictment, and ſaith, that another time he was outlawed upon the ſame felony, and reverſed the outlawry by errour, this is no good plea; for though hee reverſed the outlawry, yet if the indictment bee good, he ſhall anſwer unto the felony: but otherwiſe it is upon outlawry of debt or treſpaſſe, for the plaintiffe ſhall have a new Originall.

A man is arraigned at the Kings ſuit for killing *I.S.* which ſaith, that at another time hee was arraigned for the killing of the ſaid *I.S.* in an appeale at the ſuit of *K.* daughter and heire of the ſame *I.S.* this is no plea, but hee ſhall be at another time arraigned; for by the Stat. of *Magna Charta cap.* 3. & 4. no man ſhall bee appealed of the death of a man at the ſuit of a woman, except it bee of the death of her husband.

Magna Charta, cap 3.4.

21.H.6. A man is arraigned upon an indictment for killing *I. S.* which ſaith, at another time hee was arraigned at the ſuit of *I. S.* ſon and heire of the ſame *I. S.* this is no good plea, if the wife of *I.S.* was alive at the time of the appeale brought; but he ſhall be another time arraigned.

21.H.8. A man is arraigned of the death of *I. S.* which ſaith, at another time he was arraigned of the ſame felony, and acquit at the ſuit of *R. S.* ſon and heire of the ſaid *I. S.* this is no plea, if the party that maketh the ſame be not the eldeſt ſon of *I.S.* at the time of the appeal, or if he have an elder ſon alive.

Two

Two men commit a felony, and one of them is arraigned and acquit, and after the acquittall hee receiveth his companion, which is attainted after of the ſame felony; this receiver which was acquit before, ſhall now bee arraigned as acceſſary to the ſame felony of which he was acquit before as principall: and if he plead this matter, it ſhall bee no ſufficient plea for him, for that hee was acceſſary after the acquittall. *fol.* 38. 17. E. 3. & 10.

A man arraigned of felony pleadeth not guilty, and the Jury is deferred for default of Jurors, and a *talis* is awarded, and at the day given by the *talis*, he pleads the Kings pardon bearing date after the day of default, this is no good plea.

Note, that when a man pleadeth a barre in matter in fact, he may pray allowance, and plead over to the felony; but when hee pleadeth a matter of record in barre, hee ſhall not plead over to the felony as a formall acquittall, the Kings pardon, and ſuch like.

FINIS.